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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,163

01/27/2005

Michael Birsha Davies

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

06/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,163

Applicant(s)

DAVIES, MICHAEL BIRSHA

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 45-51 and 53-55 is/are rejected.
- 7) ☒ Claim(s) 5-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/27/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Preliminary Amendment

1. The preliminary amendment filed on 1/27/2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4,45-46,53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Lippman 4,765,515.

Lippman discloses a fluid dispensing device (10), which comprises a body cavity comprising a body structure including a housing (20), a nozzle (53) extending out from an upper end of the housing for insertion into the body cavity, a fluid discharge device moveably housed within the housing, the fluid discharge device comprising a container (50) for storing the fluid to be dispensed having a neck (52a) at one end and a compression pump (52) having a suction inlet located within the container and, a discharge outlet extending out from the neck of the container for transferring fluid from the pump to the nozzle (col. 4, ll. 30-64), at least one lever (31,21) to apply a force to an actuating means (22) used to move the container towards the nozzle so as to actuate the pump wherein the or each lever is pivotally supported at a lower end within the housing and the actuating means connects to the neck of the container as seen in

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Figure 4, the actuating means connects to the neck of the container by a collar (54) engaging with the neck of the container.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lippman 4,765,515 in view of Biggadike 6,750,210.

Lippman has taught all the features of the claimed invention except that the fluid medicament is an anti-inflammatory medicament. Biggadike teaches the use of a fluid medicament and where the fluid medicament being an anti-inflammatory medicament (col. 1, ll. 10-41).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Lippman's medicament with Biggadike's medicament as taught by Biggadike in (col. 1, ll. 10-41), in order to provide a fluid medicament for the treatment of inflammatory and allergic conditions.

Allowable Subject Matter

6. Claims 5-44 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Polan 6,152,330, Fukada 6,237,812, Van Lit 4,223,812, Cheng et al. 4,111,338, Ryan 2,904,223 and Newell et al. 4,678,106 disclose other types of fluid dispensing device.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
June 20, 2007

 6/20/07
Frederick C. Nicolas
Primary Examiner
Art Unit 3754